

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(McCook, Nebraska))

MM Docket No. 00-6
RM-9791

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COUNTERPROPOSAL

Respectfully submitted,

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March 6, 2000

No. of Copies rec'd 014
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SUMMARY

This counterproposal is filed on behalf of The Meadowlark Group, Inc., permittee of Station KAVD(FM), Limon, Colorado. This counterproposal requests the upgrade of KAVD to a full Class C station and its relocation to serve a new community of license, Parker, Colorado, as its first local service. Limon will retain existing local service. The relocation will result in a substantial net gain in area and population served and will provide a second aural service.

In order to make the proposed changes to KAVD, three existing stations will be required to change channel. Two of the affected licensees has provided statements consenting to the proposed changes. Consistent with prior cases, the proponents request that the Commission issue a Show Cause Order with respect to the other affected licensee and to one permittee. In each case, however, the proponent will reimburse the affected licensees and permittee for their expenses in making the requested changes. One additional change is necessary for a channel that has been allotted but not yet applied for.

The Counterproposal conflicts with the Commission's Notice of Proposed Rule Making in MM Docket No. 00-6 proposing to allot Channel 271C1 to McCook, Nebraska, since this Counterproposal proposes to allot that channel instead to Imperial, Nebraska. However, this Counterproposal proposes an alternate channel, Channel 275C1, for allotment at McCook. Therefore, both proposals can be granted and no weighing of the public interest benefit is necessary.

Accordingly, for the reasons set forth herein, the proponents urge the Commission to grant this Counterproposal.

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COUNTER PROPOSAL

The Meadowlark Group, Inc. ("MGI"), permittee of Station KAVD(FM), Limon, Colorado, by its counsel, hereby submits this counterproposal to the Notice of Proposed Rule Making, 15 FCC Rcd ____ (2000) (DA 00-66, released January 14, 2000) in the above-captioned proceeding. MGI proposes to substitute Channel 276C for Channel 276C1 and change its community of license from Limon to Parker, Colorado as its first local service.¹ MGI also requests that its permit be modified to specify Channel 276C at Parker, accordingly. In order to accomplish this Class C upgrade, the following changes to the FM Table of Allotments are requested (listed alphabetically):

-
1. On March 29, 1999 MGI, jointly with the then pending transferee, ColoRadio, Inc., filed a counterproposal in MM Docket 99-28 which has remained pending since that date. MGI has decided to file for the same new community of license but with a different scenario of channel changes. MGI requests the Commission to delay processing of MM Docket 99-28 and process this Counterproposal instead. Should the instant MGI proposal for Channel 276C at Parker, Colorado be granted, MGI's proposal in MM Docket 99-28 could be dismissed.

<u>Community</u>	<u>Channel</u>	
	<u>Existing</u>	<u>Proposed</u>
Aspen, CO	249C3	276C3
Avon, CO	276C2	249C2
Limon, CO	276C1	----
Parker, CO	----	276C
Westcliffe, CO (vacant)	276A	227A
Alliance, NE	271C1	263C1
Imperial, NE (unbuilt)	275C	271C

This proposal will require only three existing stations (KZYR, Avon, KSPN, Aspen and KPNY, Alliance) to change channel and only one station (KZYR, Avon) to change its transmitter site reference point. As will be discussed further herein, MGI has entered into agreements with the Avon and Aspen stations for reimbursement of the changes and these licensees have provided consent statements for the changes.

In support hereof, MGI states as follows:

I. PRELIMINARY MATTERS

1. MGI hereby states that, as the licensee, it will reimburse all other licensees for their reasonable expenses in changing channel and/or transmitter site in accordance with Circleville, Ohio, 8 FCC 2d 159 (1967). MGI also states that it will apply for Channel 276C at Parker and construct the facility if the Commission grants this proposal.

2. Although one station has not provided a consent statement for its change in facilities, this proposal complies with the Commission's Columbus, Nebraska policy 59 RR 2d 1185 (1986).

3. As a final preliminary matter, MGI hereby states that pursuant to Section 1.420(j), it has not paid nor promised to pay, in any agreement, any licensee, permittee or applicant for

withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application.

II. CONFLICT WITH THE NPRM

4. As indicated in the attached Engineering Statement this proposal for a first local service at Parker conflicts with the NPRM proposal to allot a fifth local service to McCook, Nebraska. MGI is offering an alternate channel (275C1) to avoid the conflict so that McCook can receive a new allotment and Parker can receive a first local service. See Figure 10. In view of the elimination of the conflict, this counterproposal should not receive the strict scrutiny given to proposals where other parties' proposals could be adversely affected.

5. In the event that for some reason Channel 275C1 can not be allotted to McCook, the Commission should favor the community of Parker for a first local service under the guidelines set forth in Revision of FM Assignment Policies and Procedures 90 FCC 2d 88 (1982). Under priority 3, a first local service is preferred over a fifth local service (priority 4). In addition, the Parker proposal will result in an overall net gain of 1,496,716 persons in an area of 13,486 sq. km.

III. CHANGE IN COMMUNITY OF LICENSE

6. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license: (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and

(3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities.

7. Here the attached channel study, Figure 1, demonstrates that the proposed allotment of Channel 276C at Parker is mutually exclusive with the current allotment of Channel 276C1 at Limon. Limon will retain existing service from Station KLIM(AM) and potential service from vacant Channel 229A and pending rule making proposals for Channel 242A and 268A. See RM-9622. Station KAVD(FM) is an unbuilt construction permit which is not providing any service at the present time. The new community, Parker, population 5,450, will obtain a first local service (Priority 3) while Limon (population 1,831) currently has local service (Priority 4). See Revision of FM Assignment Policies and Procedures, supra.

8. The community of Parker is not part of any urbanized area and the proposed principal community contour will not cover 50% of an urbanized area.

9. Parker fully satisfies the Commission's definition of "community" for allotment purposes. The Town of Parker was incorporated in May 1981. The 1990 U.S. census lists Parker's population at 5,450. The town now estimates that there are 14,000 residents living within the incorporated town of Parker.² There is an elected mayor and a six member town council to govern the town. The town employs a town administrator as well. Parker has its own Planning Commission, Parks and Recreation Commission, Board of Appeals, Cultural Commission and Landmark Commission. See Exhibit A.

2. See Parker Government - Douglas County, Colorado reference page, attached as Exhibit A, taken from the Douglas County Library website (<http://douglas.lib.co.us/dcguide/parker.htm>).

10. Parker has its own police department, supervised by its Chief of Police. The Parker Fire Protection District serves the towns of Parker and Foxfield. Parker is home of the Parker Medical Center. Parker has its own zip codes (80134 and 80138) and its own post office. There is a public library in Parker, which is a branch of the Douglas County Public Library system. See Exhibit A.

11. There are eight elementary schools located in Parker.³ There are also two middle schools and two high schools in Parker.⁴ Parker has its own Chamber of Commerce with hundreds of member business offering a large variety of services. There are eighteen churches and religious centers in Parker. Two local newspapers serve the Town of Parker -- The Parker Trail and the Weekly News Chronicle. See Exhibit A.

12. Each year, the Town of Parker hosts the “Parker Country Christmas” and the “Parker Country Festival.” The Country Christmas features the largest parade of horses and carriages in all of Colorado, with over 10 entries each year. The carriage parade starts a week-long series of events including a town Christmas tree lighting, arts and crafts fair, chili dinner and Sunday pancake breakfast. The Country Festival is a three day summer celebration that features an arts and crafts fair, live entertainment, a pie-eating contest and Kids’ Day. See Exhibit A.

13. Parker is also home to many service organizations, including the Parker Optimist Club, Parker Rotary Club, Parker Sunrise Lions Club, Knight of Columbus Ave Maria Council No.

3. Two of the schools are K-grade 3 and two others are for grades 4-6.

4. One of the high schools is for grades 9-10 only. The other is for grades 9-12.

7880, Parker Breakfast Club, Parker VFW Post and Auxiliary 4266, American Legion Parker Post 1864, and the Parker Area Historical Society. See Exhibit A.

IV. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES
A. STATION KAVD
PARKER, COLORADO

14. As indicated in the attached channel study, Figure 1, Channel 276C can be allotted to Parker at coordinates 39° 26' 08" N/104° 02' 05" W in compliance with the Commission's spacing rules and provide a 70 dBu signal to Parker (See Figure 2) provided the following changes are made:

- Channel 249C2 is substituted for Channel 276C2 for Station KZYR, Avon, Colorado at a new transmitter site reference point
- Channel 227A is substituted for vacant Channel 276A at Westcliffe, Colorado at the same reference coordinates
- Channel 271C is substituted for unbuilt Channel 275C at Imperial, Nebraska at the permittee's authorized site

15. The upgrade to Class C at Parker will result in a net gain in population to 1,515,568 persons and in area served by 13,340 sq. km. with no loss area. See Figure 3. Thus no showing of remaining reception services in the loss area is required. Furthermore, as discussed in the attached Engineering Statement, the Parker proposal will provide a second aural service (grey area) to 1,062 persons in a 1,892 sq. km. area. See Figure 3C. This study is based on using KAVD's authorized facilities rather than the maximum facilities for its class. While MGI recognizes that maximum facilities are generally used to determine gain area under Greenup, Kentucky and Athens, Ohio, 2 FCC Rcd 4319 (1987), recons granted, 4 FCC Rcd 3843 (1989), the Commission's Community of

License decision refers to a different standard when determining loss of existing service. The Commission stated at ¶ 19 of the MO&O, 5 FCC Rcd 7094, 7097:

[T]he public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocoting of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service or both. (Emphasis added.)

16. Therefore it appears that the Commission's decision in Community of License which was decided after the staff's decision in Greenup, is concerned about existing reception service not potential service where there is a change in community of license. In other words, the Greenup decision is still applicable to a gain area comparison but where the case involves a change in community of license and a determination such as whether a white or grey area is being created, it is proper to use actual or authorized facilities rather than maximum or potential facilities. This theory is buttressed by the fact that the Commission only requires a five aural service showing in the loss area when there is a change in community of license. The Commission does not generally request a showing of the number of services in the loss area where there is a change in coverage pursuant to an upgrade proposal or "one-step" application proceeding. Thus, pursuant to the Commission's expressed standard of using existing or authorized facilities for determining loss area, there will be no loss area in this instance. See Engineering Statement.

17. Despite having made a case for using existing (or authorized) facilities for determining "removal of existing service", should the Commission disagree with this argument, MGI has also made a showing using maximum Class C1 facilities for its authorized Limon station. Under this showing, there would be an insignificant area of 17 sq. km. with 3 persons having only one

service. However, MGI would actual provide a second aural service to an area of 575 sq. km. and 125 persons. This benefit would outweigh a theoretical loss of potential service if the Commission insists on using maximum C1 facilities for loss area determinations. See Silverton and Bayfield, Colorado, DA 99-3004, released December 23, 1999 (where the provision of first and second aural services outweighed the loss of such services).

18. MGI reiterates that as the permittee of KAVD, it will apply for Channel 276C to serve Parker and construct the facility.

B. STATION KZYR, AVON, COLORADO

19. In order to allot Channel 276C to Parker, Channel 249C2 must be substituted for Channel 276C2 for Station KZYR, Avon, Colorado with a change in the transmitter site reference coordinates. Channel 249C2 can be allotted to Avon provided a channel substitution is made for Station KSPN (Channel 249C3), Aspen, Colorado. See Figure 4. The Aspen channel change will be discussed herein. The licensee of Station KZYR has provided a statement in which it consents to the change in channel and transmitter site reference coordinates. See Exhibit B.

20. The change in transmitter site reference coordinates is only 1.4 km from its current site. At the new coordinates, the allotment will provide a 70 dBu signal over Avon, See Figure 5, and will result in a net gain in population served to 12,229 and in area by 3443 sq. km. See Figure 6.

21. MGI has entered into a reimbursement agreement with the licensee of Station KZYR, Avon. Should the Commission decide to substitute Channel 249C2 for Channel 270C2 at the new

transmitter site reference point, MGI will reimburse the licensee of Station KZYR for its reasonable costs in changing channel and transmitter site.

C. STATION KSPN, ASPEN, COLORADO

22. In order to substitute Channel 249C2 at Avon, Channel 276C3 must be substituted for Channel 249C3 at Aspen, Colorado for Station KSPN. Channel 276C3 can be substituted at the KSPN license site with no other changes needed. See Figure 7. The licensee of Station KSPN, Aspen has provided a statement of consent to the channel change. See Exhibit B. MGI has entered into a reimbursement agreement with the licensee of Station KSPN and hereby states that should the Commission adopt MGI's proposal and substitute Channel 276C3 for Channel 249C3 at Aspen, MGI will reimburse the licensee for its reasonable expenses in changing channels.

D. CHANNEL 276A, WESTCLIFFE, COLORADO

23. In order to substitute Channel 276C at Parker, Channel 227A must be substituted for unoccupied Channel 276A at Westcliffe, Colorado. The Westcliffe channel allotment has not been opened for application yet. Channel 227A can be substituted at Westcliffe in compliance with Section 73.207 of the Commission's Rules at the same reference coordinates used for Channel 276A. See Figure 8. In the alternative Channel 249A is also available for substitution at Westcliffe. See Figure 9.

E. CHANNEL 275C, IMPERIAL, NEBRASKA

24. In order to allot Channel 276C to Parker, Channel 271C must be substituted for unbuilt Channel 275C at Imperial, Nebraska. Channel 271C can be allotted at the authorized site

for Channel 275C at Imperial. See Figure 10. In view of the fact that the Imperial station is unbuilt at this time, MGI has not entered into a reimbursement agreement and did not obtain the consent of the permittee. Thus, MGI requests that the Commission immediately issue an Order to Show Cause to Imperial Media Associates, the permittee, in order to change its channel. MGI hereby states that should the permittee construct its facility prior to the conclusion of this proceeding and incur any costs in changing channels, MGI will reimburse the permittee in accordance with Circleville, Ohio, supra.

F. STATION KPNY, ALLIANCE, NEBRASKA

25. In order to substitute Channel 271C at Imperial, Nebraska, Channel 263C1 must be substituted for Channel 271C1 at Station KPNY, Alliance, Nebraska. Channel 263C1 can be substituted at the current license site for Station KPNY in accordance with the Commission's distance separation requirements. See Figure 12. The licensee of Station KPNY has not provided a consent statement to the channel change. Thus, MGI requests that the Commission include this station in its Order to Show Cause in order to change the channel. MGI hereby states that should the Commission adopt the Parker proposal and substitute Channel 263C1 for Channel 271C1, MGI will reimburse the licensee of KPNY in accordance with Circleville, Ohio, supra.

V. CONCLUSION

24. This counterproposal is intended to provide Parker, Colorado with a first local service on Channel 276C for Station KAVD. Rather than build the facility as a Class C1 to cover Limon and then build a Class C station at another transmitter site to cover Parker, MGI requests expedited

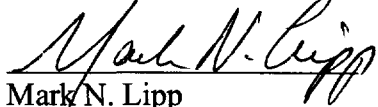
action on its Counterproposal which is filed in a manner which eliminates all known conflicts, i.e., Channel 275C1 for Channel 271C1 at McCook. The KAVD permit expires automatically on October 22, 2000 under the Commission's new 3 year rule. However, upon adoption of this rule making the time for construction will be tolled until a new permit at Parker is issued. In addition to the provision of a first local service at Parker, the proposal will provide overall net gains in area -- 13,486 sq. km, and population -- 1,496,716 persons and second aural service (Priority 2) of 548 sq. km. and 122 persons.

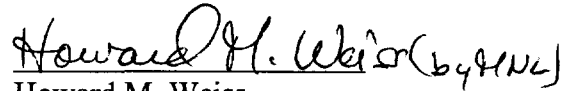
25. MGI is confident that it has prepared this proposal in accordance with the Commission's rules and policies with regard to the Commission's decision in Community of License. However, if for some reason the Commission does not find it to be in the public interest to reallocate Channel 276C to Parker, MGI has also made a showing that Channel 276C can be upgraded to serve Limon. A channel study, gain area analysis and technical supporting data are provided in the Engineering Statement. See Figures 13-15. MGI states that if the Parker reallocation cannot be made, it will apply for and construct Channel 276C at Limon.

26. MGI is confident that it can implement this rule making proposal in a timely manner. Therefore, MGI respectfully requests that the Commission grant the Counterproposal to allot Channel 276C to Parker, Colorado as its first local service.

Respectfully submitted,

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